



Association of Bay Area Governments
Bay Area Air Quality Management District
Metropolitan Transportation Commission

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Joint Policy Committee / Regional Planning Program

Date: June 6, 2005
To: Joint Policy Committee
From: Regional Planning Program Director
Subject: Legislation Referencing the Joint Policy Committee

Currently before the State Legislature are two bills which reference the Joint Policy Committee. This memo describes those bills and recommends JPC positions on each.

SB 731 (Torlakson, *et al*) is a multi-subject transportation bill which, among other things, would require the Joint Policy Committee to include one representative appointed by the Secretary of the Business, Transportation and Housing Agency. This legislation is apparently intended to implement an initiative included in the Governor's signing message accompanying SB 849, the 2004 legislation which codified the JPC. In response to that signing message, at its meeting in November 2004, the JPC resolved:

THAT the Secretary of Business, Transportation and Housing be invited to appoint an *ex officio* member to the Joint Policy Committee.

Subsequently, the Secretary responded to the JPC's invitation and has herself become a member of the JPC. Given this cooperative arrangement, legislation would appear unnecessary. However, if the State feels it needs the additional comfort of legislation, there is no pressing reason for the JPC to object.

Of more substantive significance is AB 986 (Torrico). This bill, sponsored by the Bay Area Council, would require the JPC to prepare a plan identifying regional priority transit-oriented development zones for the San Francisco Bay Area region. The plan report would be reviewed and approved by MTC and ABAG and submitted to the Legislature by January 1, 2007. The bill proposes some incentives which would flow to these priority areas.

The regional prioritization of TOD zones for both expansion and existing transit investments could be a powerful smart-growth planning tool, particularly if accompanied by meaningful incentives. However, there are some issues with the details of the bill as currently written.

The bill says the JPC may prioritize "no more than fifty" TOD zones at any one time. If the incentives are meaningful, there will be pressure to fill all fifty potential spots. Such a large number may dilute the concept of "priority" and make it difficult for genuine priorities to achieve critical mass. If nearly everything is a priority, nothing is a priority. It would be better for the legislation not to set a priority floor or ceiling but to allow the JPC to exercise its complete discretion in determining the number of priorities. At least initially, I suspect this number will be considerably less than fifty.

The bill identifies two classes of incentives that would flow to priority TOD zones: special taxing powers and density bonuses.

The special taxing powers would come from the ability to establish a property and business improvement district or a Mello-Roos community facility district. While these districts may provide incentives to local governments, helping them overcome some of the fiscal disincentives to redevelopment, they impose additional costs on the residents and businesses in the area and, depending on their level, may introduce a competitive market disincentive to developers and their customers. There is also an equity question. The benefits of transit-oriented development are enjoyed by the broader community; both those who live in a TOD district and those who live elsewhere benefit from increased transit ridership and reduced vehicle miles traveled. However, with a special taxing district, those who live in the district may bear a disproportionate share of the costs.

The bill's authors undoubtedly believe that local jurisdictions will implement their special taxing powers with care so as not to introduce development disincentives, affordability issues or large equity consequences, and there is no reason to challenge this assumption. However, the task for local jurisdictions might be assisted if other complementary financial incentives were also available: in particular, tax increment financing as proposed in SB 521 (Torlakson) or AB 1203 (Mullin) and assistance for specific planning as provided for in SB 223 (Torlakson). If specific planning is tied to Master Environmental Impact Reports (MEIRs), there is a possibility of providing a substantial development incentive through an expedited CEQA process.

The bill's sponsors argue that a mandated density bonus would add support to greater density and affordability. However, it is possible that localities will simply reduce base densities to arrive at acceptable end densities including the bonus. It may be simpler and more honest to plan for those end densities from the outset or to reward the bonus not as-of-right, but in return for the provision of tangible community benefits as determined by the local planning process.

AB 986 contains standard language noting that it imposes a state-mandated local program and that the Commission on State Mandates may award reimbursement for the costs of that program. Notwithstanding this language, the Commission on State Mandates has recently rendered a decision denying State reimbursements for costs incurred in carrying out the State mandated regional housing needs allocation (RHNA) process. The Commission reasoned that local public entities that do not have taxing powers and that are not subject to State constitutional spending limits are not eligible for reimbursement. The JPC may be able to establish priorities inexpensively from work already completed. However, if additional analytic work is required, it may be necessary to receive funding directly from an explicit provision in this bill or from another assured state source.

RECOMMENDATION

The JPC has no legislative function of its own, but it can recommend advocacy positions to its member agencies.

I RECOMMEND:

- A. THAT the JPC take no position on SB 731 (Torlakson, *et al*),
- B. THAT the JPC request its member agencies to seek amendment to AB 986 (Torrico) consistent with the comments in this memo.